IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 2006 OF 2004

JUGAL KISHORE GUPTA & ANR. .. PETITIONERS

Vs.

Dr. RAMCHANDRA VISHNU PARANJAPE.. RESPONDENTS

Mr. Sugandh Deshmukh for A.V. Anturkar for petitioners

Mr. G.S. Godbole for R

CORAM:-SMT. RANJANA DESAI, J.

DATED:-28-3-2005

P.C.

In this writ petition order dated 3rd February, 2004 passed by the Civil Judge, Senior Division, at Pune in Special Civil Suit No. 38 of 1990 is under challenge. This order is filed on an application made by the defendant under Order XI Rule 14 of the Code of Civil Procedure. The defendant has called upon the plaintiff to produce power of attorney dated 9/3/75. The learned Judge has observed that the plaintiffs are in possession or custody of

power of attorney dated 9/3/75 and hence they are directed to produce power of attorney by next date.

2. The learned counsel contended that the petitioners do not have the power of attorney in their possession. He drew my attention to another order dated 1/11/96 passed by the same court below Exhibit-48, whereby similar prayer made by the defendant was rejected by the same court. The learned counsel also drew my attention to certain observations made by me in my judgment in Writ Petition No. 1974 of 1990 dated 10/3/03. He contended that in view of the said observations the learned Judge ought not to have directed the petitioners to produce the power of attorney.

3. If the petitioners are not in possession of the power of attorney all that they have to do is to file an affidavit to that effect before the trial court. It is also necessary for them to draw the attention of the trial court to the order dated 1/11/96 passed on Exhibit-48 and request the learned Judge to pass appropriate orders. Hence the following order:

> It shall be open to the respondent to file an appropriate affidavit before the trial court. The petitioner will also draw attention of the court to its earlier order dated 1/11/96. The parties will be at liberty to urge all contentions. The trial court shall then pass appropriate orders.
>
> This court has not expressed any opinion on the merits of the

rival contentions.

Petition disposed of with the above directions.

In view of that civil application also is disposed of.

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